

CHAPTER 24 PLANNED UNIT DEVELOPMENT PROCEDURES**Section**

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2400 PLANNED UNIT DEVELOPMENT (PUD)

- 2400.1 The planned unit development (PUD) process is designed to encourage high quality developments that provide public benefits.
- 2400.2 The overall goal is to permit flexibility of development and other incentives, such as increased building height and density; provided, that the project offers a commendable number or quality of public benefits and that it protects and advances the public health, safety, welfare, and convenience.
- 2400.3 A comprehensive public review by the Zoning Commission of the specific development proposal is required in order to evaluate the public benefits offered in proportion to the flexibility or incentives requested and in order to establish a basis for long-term public control over the specific use and development of the property.
- 2400.4 While providing for greater flexibility in planning and design than may be possible under conventional zoning procedures, the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, nor to result in action that is inconsistent with the Comprehensive Plan.
- 2400.5 The Commission may approve a PUD application with or without modifications. In carrying out the purposes of this chapter, the Commission may establish general standards and, in individual cases, set standards and conditions for height and bulk lesser or greater than the standards established for the affected districts in this chapter or elsewhere in this title.
- 2400.6 The Commission may also set appropriate time limits for benefits conferred under this chapter to individual applicants in order to ensure the construction of a proposed development in accordance with the conditions established.

2400.7 Failure of an applicant to complete a proposed development as directed within the time limits set by the Commission or the Zoning Regulations shall result in the termination of the benefits granted under the application, and reversion of the zoning controls to the pre-existing regulations and map.

2400.8 An Electronic Equipment Facility (EEF) may occupy more than fifty percent (50%) of the gross floor area of a building in the C-3 and C-4 Districts, if approved as part of a PUD in accordance with the requirements of this chapter and subject to the following additional criteria:

- (a) The aggregate total area to be devoted to EEF use may not exceed fifty percent (50%) of the permitted gross floor area of the entire project; and
- (b) The EEF shall be located on a portion of the lot that does not directly front on a street so as to preclude retail, service, and office uses from being developed on the street frontage of the project.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 6-641.15 (2001) (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))).

SOURCE: Final Rulemaking published at 42 DCR 6613 (December 1, 1995), effective December 8, 1995; as amended by Final Rulemaking published at 48 DCR 9830, 9840 (October 26, 2001); Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8512-13 (October 20, 2000); and Final Rulemaking published at 49 DCR 1655 (February 22, 2002), incorporating by reference the text of Proposed Rulemaking published at 48 DCR 11159, 11166 (December 7, 2001)..

2401 AREA REQUIREMENTS

2401.1 The minimum area included within the proposed development, including the area of public streets or alleys proposed to be closed, shall be as follows:

- (a) A total of two (2) acres for a development to be located in any R-1, R-2, R-3, R-4, or R-5-A District;
- (b) A total of one (1) acre for a development to be located in any R-5-B District; or
- (c) A total of fifteen thousand square feet (15,000 ft.²) for development to be located in any other zone district.

2401.2 The Commission may waive not more than fifty percent (50%) of the minimum area requirement of this section, provided:

- (a) The Commission shall find after public hearing that the development is of exceptional merit and in the best interest of the city or country; and

(b) The Commission shall find one of the following:

- (1) If the development is to be located outside the Central Employment Area, at least eighty percent (80%) of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto; or
- (2) If the development is to be located in a portion of the Central Employment Area which is in an HR Overlay District, the development shall contain a minimum floor area ratio of 2.0 devoted to hotel or apartment house use.

2401.3 All of the property included in a PUD shall be contiguous, except that the property may be separated only by a public street, alley, or right-of-way.

SOURCE: Final Rulemaking published at 42 DCR 6613, 6614 (December 1, 1995); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8513 (October 20, 2000)

2402 TYPES OF APPLICATIONS

2402.1 The PUD process may be either a one-stage or a two-stage process.

2402.2 The two (2) parts of a two-stage PUD shall be as follows:

- (a) The first stage involves a general review of the site's suitability for use as a PUD; the appropriateness, character, scale, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with city-wide, ward, and area plans of the District of Columbia, and the other goals of the PUD process; and
- (b) The second stage is a detailed site plan review to determine compliance with the intent and purposes of the PUD process, the first stage approval, and this title.

2402.3 An applicant may elect to file a single application for consolidated PUD review, consolidating the two-stage review into one proceeding.

2402.4 To initiate a consolidated review, an applicant shall file all of the material required for both the first and second stages, as specified in §§ 2406.11 and 2406.12, at the time of initial filing. The applicant shall also comply with the requirements of §§ 2406.7 through 2406.10 regarding pre-filing notices.

2402.5 The application shall be processed as if it were a preliminary application. When the Commission considers whether to set the case for a hearing, the Commission shall determine whether the application is sufficiently clear and detailed to be considered at one proceeding.

2402.6 The Commission reserves the right to direct an applicant to revise a one-stage application into a two-stage application, if in the opinion of the Commission the circumstances and issues surrounding the proposal require a two-stage review.

2402.7 The Commission may dismiss or deny the application at the conclusion of the presentation of the applicant's case or at any point thereafter.

SOURCE: Final Rulemaking published at 42 DCR 6613, 6615 (December 1, 1995); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8513-14 (October 20, 2000).

2403 PUD EVALUATION STANDARDS

2403.1 The Commission will evaluate and approve, disapprove, or modify a PUD application according to the standards in this section.

2403.2 The applicant shall have the burden of proof to justify the granting of the application according to these standards.

2403.3 The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.

2403.4 The Commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

2403.5 In the context of the Comprehensive Plan, the Commission shall also evaluate the specific public benefits and project amenities of the proposed development, which features may in some instances overlap.

2403.6 Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.

2403.7 A project amenity is one type of public benefit, specifically a functional or aesthetic feature of the proposed development that adds to the attractiveness, convenience, or comfort of the project for occupants and immediate neighbors.

2403.8 In deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

- 2403.9 Public benefits and project amenities of the proposed PUD may be exhibited and documented in any of the following or additional categories:
- (a) Urban design, architecture, landscaping, or creation or preservation of open spaces;
 - (b) Site planning, and efficient and economical land utilization;
 - (c) Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts;
 - (d) Historic preservation of private or public structures, places, or parks;
 - (e) Employment and training opportunities;
 - (f) Housing and affordable housing;
 - (g) Social services/facilities;
 - (h) Environmental benefits, such as stormwater runoff controls and preservation of open space or trees;
 - (i) Uses of special value to the neighborhood or the District of Columbia as a whole; and
 - (j) Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.
- 2403.10 A project may qualify for approval by being particularly strong in only one or a few of the categories in §2403.9, but must be acceptable in all proffered categories and superior in many.
- 2403.11 To assist the Commission in applying the evaluation standards of this section, the applicant shall prepare and submit to the record of the case an annotated table that shows:
- (a) The extent to which the proposed development would comply with the standards and requirements that would apply to a matter-of-right development under the zone district classification of the site at the time the application is filed;
 - (b) The specific relief that the applicant requests from the matter-of-right standards and requirements; and

- (c) If the applicant requests a map amendment, the extent of compliance with, and the requested relief from, the matter-of-right standards and requirements of development under conventional zoning.
- 2403.12 The annotated table required by § 2403.11 shall also show how the public benefits offered are superior in quality and quantity to typical development of the type proposed and the duration of the operational or grant programs.
- 2403.13 Public benefits other than affordable housing, such as public facilities or public open space, may be located off-site; provided, that:
 - (a) There is a clear public policy relationship between the PUD proposal and the off-site benefit; and
 - (b) The off-site benefit shall be located within one-quarter mile of the PUD site or within the boundaries of the Advisory Neighborhood Commission for the area that includes the PUD site.
- 2403.14 If the off-site public benefit is housing, it shall be provided according to the requirements of § 2404.

SOURCE: Final Rulemaking published at 42 DCR 6613, 6616 (December 1, 1995), effective December 8, 1995; as amended by Final Rulemaking published at 45 DCR 695, 701 (February 6, 1998); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8514-15, 8524 (October 20, 2000).

2404 HOUSING LINKAGE

- 2404.1 A PUD application that proposes an increase in gross floor area devoted to office space over and above the amount of office space permitted as a matter of right under the zoning included as part of the PUD shall comply with the housing linkage requirements of this section, as mandated by the Comprehensive Plan.
- 2404.2 The housing linkage requirements of this section shall require the applicant to produce or financially assist in the production of dwellings or multiple dwellings that are affordable to low- and moderate-income people; provided, that:
 - (a) The quantity of low and moderate income housing that is required shall be based upon the requested increase in office floor area ratio (FAR); and
 - (b) No income limits shall apply to housing that is constructed on or adjacent to the site of the PUD.

- 2404.3 The applicant may either provide the required housing by means of new construction or rehabilitation as specified in § 2404.6, or may elect to make a financial contribution as provided in § 2404.7.
- 2404.4 The following exclusions and modifications shall apply:
- (a) Commercial floor area other than office space shall be excluded from these computations for both the proposed PUD and the existing, matter-of-right commercial density; provided, that the matter-of-right commercial density of the existing zone district shall be reduced by 0.5 FAR to allow for normal retail use;
 - (b) If the proposed PUD provides an amount of housing equal to or greater than the housing that would be required under this section, no additional housing shall be required;
 - (c) No housing requirement pursuant to this section shall apply to a PUD that is proposed for property located within the boundaries of the Downtown Development Overlay District provisions of chapter 17 of this title, nor to any PUD application filed by an agency of the federal government, the Washington Metropolitan Area Transit Authority (WMATA), or the Pennsylvania Avenue Development Corporation (PADC).
 - (d) An applicant may apply for a reduction or elimination of the housing required under this section as part of the PUD application; provided:
 - (1) The property is located in an area classified in the Generalized Land Use Map of the Comprehensive Plan as a Development Opportunity Area, a Production and Technical Employment Area, or a New or Upgraded Commercial Center; and
 - (2) The Commission finds, after public hearing, that the reduced or eliminated housing requirement is necessitated or justified by the PUD's provision of other public benefits that are of exceptional merit and in the best interests of the city or the country.
- 2404.5 Qualifying residential uses by housing linkage shall include dwellings, multiple dwellings, flats, rooming houses, and boarding houses, but shall exclude transient accommodations, all as defined in § 199.1.
- 2404.6 If the applicant constructs or rehabilitates the required housing, the following conditions shall apply:

- (a) The gross square footage of new or rehabilitated housing shall be based upon the gross square footage of increased office space that the PUD provides in excess of that allowed as a matter of right by the zoning included in the PUD application; provided, that the amount of housing required shall be as follows:
 - (1) Not less than one-fourth ($1/4$) of the gross square feet of increased office space if the required housing is part of the PUD or is situated on adjacent property;
 - (2) Not less than one-third ($1/3$) of the gross square feet of increased office space if the location of the required housing does not comply with subparagraph (1) of this paragraph, but is nonetheless within the same Advisory Neighborhood Commission area as the PUD, or if it is located within a Housing Opportunity Area as designated in the Comprehensive Plan; and
 - (3) Not less than one-half ($1/2$) of the gross square feet of increased office space if the location of the required housing is other than as approved in subparagraphs (1) and (2) above;
- (b) The applicant may construct or rehabilitate the housing units, or may secure the housing production by other business arrangements, including but not limited to, joint venture, partnership, or contract construction;
- (c) If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than eight hundred and fifty square feet (850 ft.^2); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing;
- (d) For purposes of this section, the word "rehabilitation" means the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia (14 DCMR);
- (e) In the case of rental housing, the required housing shall be maintained as affordable dwelling units for not less than twenty (20) years;
- (f) If the required housing is provided for home ownership, the Commission shall have the authority to devise and adopt suitable provisions appropriate to each case; provided, that:
 - (1) The provisions shall be consistent with the intent of the Comprehensive Plan housing linkage legislation; and

- (2) The Commission shall consider whether to require the applicant to legally mandate recapture of subsidy funds by the housing sponsor from the home owner if the dwelling unit is sold to a person or household that does not qualify as low or moderate income during a twenty (20) year period after the original occupancy of the dwelling unit, so that the housing sponsor may re-use the funds for other affordable housing projects; and
 - (g) No certificate of occupancy shall be issued for the office component of a PUD that is subject to the provisions of this section until a certificate of occupancy has been issued for the housing required pursuant to this section.
- 2404.7 As an alternative to constructing or rehabilitating the required housing as provided in § 2404.6, the applicant may contribute funds to a housing trust fund as defined in § 2499.2; provided:
 - (a) The contribution shall be equal to one-half (1/2) of the assessed value of the increase in permitted gross floor area for office use;
 - (b) The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Office of Tax and Revenue as of the date of the PUD application; and
 - (c) The contribution shall be determined by dividing the assessed value per square foot of land that comprises the PUD site by the maximum permitted commercial FAR and multiplying that amount times the requested increase in gross square feet proposed for office use.
- 2404.8 If any housing exists on the development site and is to be removed in order to allow construction of the PUD, the total assessed value of the housing removed shall be added to the financial contribution as computed in § 2404.7; provided, that this provision shall apply to any housing removed beginning one (1) year prior to the date of the PUD application.
- 2404.9 Not less than one-half (1/2) of the required total financial contribution shall be made prior to the issuance of a building permit for any part of the office component of the PUD, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any part of the office component of the PUD.
- 2404.10 The Commission's order granting a PUD that includes housing linkage shall specify reporting, certification, and enforcement measures suitable in each case to ensure that the requirements of this section are carried out.
- 2404.11 A PUD that is subject to the housing requirement of this section shall not be relieved of the requirement to be found meritorious pursuant to the evaluation standards in § 2403.

- 2404.12 The Office of Planning shall refer each application for a PUD subject to the provisions of this section to the Department of Housing and Community Development for an analysis of compliance with the housing requirements of this section and a recommendation.

SOURCE: Final Rulemaking published at 45 DCR 695, 696-700 (February 6, 1998); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8521-23 (October 20, 2000)

EDITOR' S NOTE: The Pennsylvania Avenue Development Corporation (PADC) referred to in paragraph (c) of § 2404.4 was abolished on April 1, 1996. See Notice of Public Interest published at 43 DCR 1648 (March 29, 1996). PADC' s responsibilities were transferred to the General Services Administration, the National Capital Planning Commission, and the National Park Service.

2405 PUD STANDARDS

- 2405.1 No building or structure shall exceed the maximum height permitted in the least restrictive zone district within the project area as indicated in the following table; provided, that the Commission may authorize minor deviations for good cause pursuant to § 2405.3:

ZONE DISTRICT	MAXIMUM HEIGHT (feet)
R-1-A, R-1-B, R-2, R-3, C-1	40
R-4, R-5-A, R-5-B, W-1, W-2, C-M-1	60
C-2-A	65
R-5-C, SP-1	75
R-5-D, R-5-E, SP-2, C-2-B, C-2-C, C-3-A, C-3-B, W-3, C-M-2, C-M-3, M	90
CR	110
C-3-C, C-4, C-5 (PAD)	130
C-5 (PAD) (Where permitted by the Building Height Act of 1910, D.C. Official Code § 6-601.05(b) (formerly codified at D.C. Code § 5-405(b) (1994 Repl.)), along the north side of Pennsylvania Avenue)	160

- 2405.2 The floor area ratio of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several zone districts included within the project area; provided, that the Commission may authorize minor deviations for good cause pursuant to § 2405.3:

FLOOR AREA RATIO (FAR)			
ZONE DISTRICT	RESIDENCE	COMMERCIAL, INCLUDING HOTELS AND MOTELS	TOTAL
R-1-A, R-1-B, R-2	0.4		0.4
R-3	0.6		0.6
R-4, R-5-A	1.0		1.0
R-5-B	3.0		3.0
R-5-C	4.0		4.0
R-5-D	4.5		4.5
R-5-E	6.0		6.0
SP-1	4.5	3.5	4.5
SP-2	6.5	4.5	6.5
CR	8.0	4.0	8.0
C-1	1.0	1.0	1.0
C-2-A	3.0	2.0	3.0
C-2-B	6.0	2.0	6.0
C-2-C	6.0	2.5	6.0
C-3-A	4.5	3.0	4.5
C-3-B	5.5	4.5	5.5
C-3-C	8.0	8.0	8.0
C-4	10.5	10.5	10.5
C-4 (facing a street at least 110 ft. wide)	11.0	11.0	11.0
C-5 (PAD)	12.0	12.0	12.0
W-1	3.0	1.0	3.0
W-2	4.0	2.0	4.0
W-3	6.0	5.0	6.0
C-M-1		3.0	3.0
C-M-2		4.0	4.0
C-M-3, M		6.0	6.0

- 2405.3 The Commission may authorize an increase of not more than five percent (5%) in the maximum height or floor area ratio; provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter.
- 2405.4 The percentage of lot occupancy shall be as otherwise prescribed in this title. However, the Commission shall have the option to approve a lot occupancy greater or lesser than the normal requirement, depending upon the exact circumstances of the particular project.
- 2405.5 Yards and courts shall be provided as otherwise prescribed in this title. However, the Commission shall have the option to approve yards or courts greater or lesser than the normal requirements, depending upon the exact circumstances of the particular project.
- 2405.6 Off-street parking spaces and loading berth facilities shall be provided as otherwise prescribed in this title. However, the Commission may reduce or increase the amount of such facilities depending on the uses and the location of the project.
- 2405.7 Notwithstanding the other prerogatives of the Commission in approving uses in PUDs, the Commission shall reserve the option to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment.
- 2405.8 Approval of the Board shall not be required for any such use approved by the Commission under § 2405.7, and the Commission shall not be required to apply the special exception standards normally applied by the Board.

SOURCE: Final Rulemaking published at 42 DCR 6613, 6619 (December 1, 1995); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8515-16 (October 20, 2000); and Final Rulemaking published at 49 DCR 2742, 2747 (March 22, 2002).

2406 FILING REQUIREMENTS

- 2406.1 Each PUD application shall meet the requirements of this section before it will be accepted by the Commission for processing.
- 2406.2 A PUD application may be filed in conjunction with a change in zoning for the property involved.
- 2406.3 No PUD application shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule.
- 2406.4 A PUD application may include property of one or more owners. The owner or owners may be public or private persons, corporations, agencies, or other entities.

- 2406.5 The name, address, and signature of each owner of property included in the area to be developed, or of the owner's authorized agent, shall be included in the PUD application.
- 2406.6 The application shall be filed on a form as may be designated from time-to-time by the Commission.
- 2406.7 At least ten (10) calendar days prior to filing an application under this chapter, the applicant shall mail written notice of its intent to file the application to the Advisory Neighborhood Commission for the area within which the property is located and to the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.
- 2406.8 The applicant may mail notice to any other person or organization the applicant determines appropriate to receive the notice.
- 2406.9 The notice shall describe generally the proposed development, including the name of all owners of the property involved and the use, height, bulk, and other significant aspects of the proposal. The notice shall also indicate the applicant's availability to discuss the proposed development with all interested and affected groups and individuals.
- 2406.10 At the time of filing the application, the applicant shall certify to whom and in what manner the required notice was given.
- 2406.11 An application for first-stage PUD approval shall include the following:
- (a) A completed application form;
 - (b) A map showing the location of the proposed project, the existing zoning for the subject site, the zoning of adjacent properties, and any proposed change of zoning;
 - (c) A statement of the purposes and objectives of the project, including the proposed form of development and a detailed statement elucidating how the application meets the PUD evaluation standards in § 2403;
 - (d) A general site, landscape, and development plan indicating the proposed use, location, dimensions, number of stories, and height of each building, and the exact area of the total site; and
 - (e) A tabulation of development data showing the following:
 - (1) The area and dimensions of each lot proposed for each building and the exact area of the total site;
 - (2) The percentage of lot occupancy of each building on each lot and the total percentage of lot occupancy for all buildings on the entire site;

- (3) The gross floor area and floor area ratio for each building on each lot, including a break-down for each use, and the total gross floor area and floor area ratio for all buildings on the entire site, including a breakdown for each use;
- (4) A circulation plan, including the location of all vehicular and pedestrian access ways and the location and number of all off-street parking spaces and loading berths, including an indication of which spaces are designated for which use;
- (5) The existing topography of the development area; the location of all major natural features, including trees of six-inch (6 in.) caliper or greater; and the location and elevations of public or private streets, alleys, or easements bounding or traversing the site, including an indication of which of the rights-of-way or easements are to be continued, relocated, or abandoned;
- (6) Estimated quantities of potable water required by the project, and of sanitary sewage and storm water to be generated, including the methods of calculating those quantities; and
- (7) Any other information needed to understand the unique character and problems of developing the PUD.

2406.12 An application for second-stage PUD approval shall include the following information:

- (a) A completed application form;
- (b) A detailed statement as to the uses to be located in the project, including the location, number, size, and types of stores, offices, residential, institutional, industrial, and other uses;
- (c) A detailed site plan, showing the location and external dimensions of all buildings and structures, utilities and other easements, walkways, driveways, plazas, arcades, and any other open spaces;
- (d) A detailed landscaping and grading plan, showing all existing contour lines, including graphic illustration of grades exceeding fifteen percent (15%) in five percent (5%) increments, landscaping to be retained, grades, planting, and landscaping. The plan shall also show the proposed drainage for the site, including the location of buildings, roads, sidewalks, water and sewer lines, inlets, and basins, and connections to public water and sewer lines. Proposed erosion control measures shall also be shown;
- (e) Typical floor plans and architectural elevations for each building, sections for each building and the project as a whole, and sections and elevations of the entire square within which the project is located;

- (f) A final detailed circulation plan showing all driveways and walkways, including widths, grades, and curb cuts, as well as detailed parking and loading plans;
- (g) Any other information needed to understand the final design of the proposal, or information specifically requested by the Commission; and
- (h) A statement showing how the second-stage plans are in accordance with the intent and purposes of this title, the PUD process, and the first-stage approval.

SOURCE: Final Rulemaking published at 42 DCR 6613, 6621-25 (December 1, 1995); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8516-17 (October 20, 2000).

2407 PROCESSING OF FIRST-STAGE PUD APPLICATIONS

- 2407.1 The Commission shall refer a PUD application to the D.C. Office of Planning, which shall report to the Commission on whether the application is consistent with the purpose of the PUD process, and whether or not a hearing should be held.
- 2407.2 Following the receipt of the report from the Office of Planning, the Commission shall review the application and determine whether a public hearing shall be granted. An application may be denied without a hearing, but no application shall be granted unless a public hearing is held.
- 2407.3 If a public hearing is granted, the Office of Planning shall coordinate review of the application and prepare an impact assessment of the project, which shall include reports in writing from relevant District departments and agencies, including, but not limited to, the Departments of Transportation and Housing and Community Development and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.
- 2407.4 The Office of Planning shall report on the:
- (a) Suitability of the site for use as a PUD;
 - (b) Appropriateness, character, scale, mixture of uses, and design of the uses proposed for the proposed development, and other identifiable public benefits; and
 - (c) Compatibility of the proposed development with the Comprehensive Plan, the goals of the PUD process in § 2400, and the PUD evaluation standards in § 2403.
- 2407.5 Notice for the public hearing on a PUD application shall be given in the same manner as for amendments to the Zoning Map as contained in chapter 30 of this title. The hearing shall be conducted as a contested case in accordance with those rules.

- 2407.6 At the public hearing, the applicant shall carry the burden of justifying the proposal. Failure of groups or persons to appear in opposition shall not relieve the applicant of the responsibility of demonstrating the merits of the application.
- 2407.7 At the public hearing, the applicant shall advise the Commission of the efforts that have been made to apprise the affected Advisory Neighborhood Commission and other individuals and community groups concerning the proposed development.
- 2407.8 The Commission shall either approve, deny, or modify the application.
- 2407.9 The Commission's first-stage approval shall set forth the appropriate zoning classification to apply to the project, and shall state in detail the elements, guidelines, and conditions that shall be followed by the applicant in the second-stage application.
- 2407.10 The first-stage approval shall be valid for a period of one year, unless a longer period is specified by the Commission, or unless the Commission extends that period.
- 2407.11 The rights granted under such an approval are conditional, and shall be exercised within the specified time limit. Unexercised rights shall lapse at the end of the specified time periods, and the zoning shall revert to pre-existing conditions, unless otherwise provided by order of the Commission.
- 2407.12 In the case of an application processed under a consolidated review, the Commission shall render a final decision on the application after the hearing process. The following shall also apply:
- (a) The applicant may file directly for a building permit without filing a subsequent application with the Commission;
 - (b) The requirements for the filing of that permit application shall be the same as those following approval of the second-stage of the two-stage process; and
 - (c) At the point at which a decision is made on a consolidated review application, the Commission may also determine that a second review is required, and rather than approving the application in a consolidated review, grant first-stage approval only and require that the applicant file additional plans for second-stage approval.

SOURCE: Final Rulemaking published at 42 DCR 6613, 6625 (December 1, 1995); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8517-18 (October 20, 2000).

2408 PROCESSING OF SECOND-STAGE PUD APPLICATIONS

- 2408.1 In accordance with §§ 2406.12 and 2407.8 through 2407.11, the applicant may file an application for second-stage PUD approval.
- 2408.2 The application shall be filed on a form as may be designated from time-to-time by the Commission.

- 2408.3 The Commission shall review the application. If the Commission determines that the application complies with all of the requirements of the first-stage approval, it shall schedule a public hearing on the second-stage application. It is the intention of the Commission that any second-stage application that is substantially in accordance with the elements, guidelines, and conditions of the first-stage approval shall be granted a hearing.
- 2408.4 The Commission shall submit the application to the D.C. Office of Planning for coordination, review, report, and impact assessment of the final design. The assessment shall include reports in writing from all relevant District agencies and departments, including, but not limited to, the Departments of Transportation and Housing and Community Development and, if a historic district or district landmark is involved, the State Historic Preservation Officer.
- 2408.5 Notice for the public hearing shall be given in the same manner as for amendments to the Zoning Map as contained in chapter 30 of this title. The hearing shall be conducted as a contested case in accordance with those rules.
- 2408.6 If the Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Commission's decision.
- 2408.7 In granting second-stage approval, the Commission may specify that the project be built in stages and shall specify the timing of the stages.
- 2408.8 The final PUD approved by the Commission shall be valid for a period of two (2) years, within which time application shall be filed for a building permit, as specified in § 2409.1
- 2408.9 Construction shall start within three (3) years of the date of final approval.
- 2408.10 The Commission may extend the time periods set forth in §§ 2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Commission determines that the following requirements are met:
- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
 - (b) There is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and
 - (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in § 2408.11.

- 2408.10 The Commission may extend the time periods set forth in §§ 2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Commission determines that the following requirements are met:
- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
 - (b) There is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and
 - (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in § 2408.11.
- 2408.11 For purposes of § 2408.10(c), an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria:
- (a) An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;
 - (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
 - (c) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.
- 2408.12 The Commission shall hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD proceedings concerning any of the criteria in § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.
- 2408.13 In the event an appeal is filed in a court of competent jurisdiction from an order of the Commission, the time limitations of §§ 2408.8 and 2408.9 shall run from the decision date of the court's final determination of the appeal. Unless stayed by the Commission or a court of competent jurisdiction, an applicant may proceed pursuant to the order of the Commission prior to any such final determination.

- 2409.2 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied.
- 2409.3 The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia between the owner or owners and the District of Columbia satisfactory to the Office of the Corporation Counsel and the Zoning Administrator, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Commission.
- 2409.4 Following the recordation of the covenant, the PUD boundaries shall be designated on the Zoning Map.
- 2409.5 The orders of the Commission issued in accordance with this chapter shall have all the force of this title, and violations shall be prosecuted in accordance with the provisions of § 3201 of this title.
- 2409.6 The Zoning Administrator shall have the authority to approve minor modifications in the final plans as approved by the Commission. These modifications shall be limited to the following:
- (a) A change not to exceed two percent (2%) in the height, percentage of lot occupancy, or gross floor area of any building;
 - (b) A change not to exceed two percent (2%) in the number of residential units, hotel rooms, institutional rooms, or gross floor area to be used for commercial or accessory uses;
 - (c) A change not to exceed two percent (2%) in the number of parking or loading spaces; and
 - (d) The relocation of any building within five feet (5 ft.) of its approved location, in order to retain flexibility of design, or for reasons of unforeseen subsoil conditions or adverse topography.
- 2409.7 In reviewing and approving any requested modifications, the Zoning Administrator shall determine that the proposed modification is consistent with the intent of Commission in approving the PUD.
- 2409.8 Following approval of any modifications under § 2409.6, the Zoning Administrator shall report to the Commission the modification approved under this section.

- 2409.9 Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in § 3030.

SOURCE: Final Rulemaking published at 42 DCR 6613, 6628 (December 1, 1995); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8519-20 (October 20, 2000).

2410 EFFECT ON PENDING APPLICATIONS

- 2410.1 This chapter shall apply to all PUD applications filed after December 8, 1995.
- 2410.2 A PUD that has already received preliminary approval or for which an application was filed before December 8, 1995, may continue to be processed to completion in accordance with the regulations in effect at the time of filing, or may be processed in accordance with this revised chapter at the option of the applicant with the Commission's approval.

SOURCE: Final Rulemaking published at 42 DCR 6613, 6630 (December 1, 1995); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8520 (October 20, 2000).

2499 DEFINITIONS

- 2499.1 The provisions of § 199.1 and the definitions in that section shall be incorporated by reference in this section.
- 2499.2 When used in this chapter, the following terms shall have the meaning ascribed:

Affordable Housing – housing where the occupant is paying no more than thirty-five percent (35%) of gross income for gross housing costs, excluding utility costs.

Housing Trust Fund – either the fund established under § 3 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802 (2001)(formerly codified at D.C. Code § 45-3102 (1996 Repl.))); or an organization that qualifies as a nonprofit organization under § 501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. § 501(c)(3)), and that also:

- (a) Exists primarily for the purpose of assisting in the production of affordable housing units;
- (b) Operates a trust fund that disburses money for affordable housing;
- (c) Receives applications for funds directly from developers of affordable housing;
- (d) Has adopted criteria for selection of projects and allocation of funds among various types of affordable housing developments; and

- (e) Has been certified by the Director of the D.C. Department of Housing and Community Development as a qualifying nonprofit organization that also complies with the requirements of (a) through (d) of this definition.

Low-income households – households whose incomes do not exceed eighty percent (80%) of the median income for the area, as determined by the U.S. Department of Housing and Urban Development (HUD), with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than eighty percent (80%) of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. Note: HUD income limits are updated annually and are available from local HUD offices.

Moderate-income households – households whose incomes are between eighty-one percent (81%) and ninety-five percent (95%) of the median for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish income ceilings higher or lower than ninety-five percent (95%) of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs, fair market rents, or unusually high or low family incomes.

SOURCE: Final Rulemaking published at 45 DCR 695, 700-01 (February 6, 1998); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8523-24 (October 20, 2000).